Order dated 30th June 2005.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 773 of 2005
With
SPECIAL CIVIL APPLICATION No. 821 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SOMANY PILKINGTONS LTD - Petitioner(s)

Versus

ASSISTANT COMMISSIONER OF LABOUR & 2 - Respondent(s)

==========

Appearance :

MR KM PATEL for Petitioner No(s).: 1.
MR.VARUN K.PATEL for Petitioner No(s).: 1.
Mr. Hasit D. Dave, AGP for Respondent No(s).: 1.
MR DJ BHATT for Respondent No(s).: 2.
==========

CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 30/06/2005

ORAL JUDGMENT

With the consent of learned advocates appearing for the parties, both the Special Civil Applications are heard finally. Heard Shri Varun K. Patel, learned advocate appearing on behalf of the petitioner, Shri Hasit D. Dave, learned AGP appearing on behalf of respondent No.1, and Shri DJ Bhatt, learned advocate appearing for respondent No.2.

2. In both these petitions, the petitioners have challenged the legality and validity of the order passed by the respondent No.1 Assistant Labour Commissioner, Mehsana, dated 21.12.2004 by which the Assistant Labour Commisisoner, Mehsana has referred the dispute raised by the respective respondent No.2 to the Labour Court for adjudication.

3. It is the case of the petitioners that the petitioner company is engaged in manufacturing of wall tiles and floor tiles and both the respondents of the two petitions were working with them. They were having

old (traditional) plant which was manual and labour oriented and as a part of process of modernisation with a view to survive in stiff competitive market they decided to close the traditional plant and put up a new plant with modern technology for better quality and output and on account of the said process of closure of old plant and commissioning of plant with new technology some workers had become surplus and the strength was required to be reduced. However instead of retrenching them they offerred Voluntary Retirement Scheme ("VRS" for short) to each worker by notice/circular dated 20th March 2002 under which the employees accepting VRS were offerred ex-gratia compensation at the rate of 30% wages for each completed year of service, one month's notice pay, gratuity at the rate prescribed under the Gratuity Act notwithstanding the fact as to whether the employee was eligible for gratuity under the Gratuity Act. It appears that the said scheme initially was till 31st March 2002 and it is the case of the petitioners that subsequently the same was extended for further period by notice dated 4.5.2002 and 11.7.2002. It is the case of the petitioners that initially there was no desired response to the scheme of voluntary retirement and the number of persons who opted for VRS were less than the number of workmen required to be reduced and therefore

the petitioners were constrained to make an application on 6.6.2002 for permission to retrench 18 workers to the appropriate authority as required under Section 25-N of The Industrial Disputes Act, 1947 ("the ID Act" for short). The respondent No.2 in the present petitions were among those 18 workers. It is also the case of the petitioners that during the pendency and hearing of the aforesaid application under Section 25-N an amicable solution was reached and 17 out of 18 workmen concerned in the permission application agreed to tender resignation and accept benefits under the scheme of voluntary retirement. Not only that but in addition to those 18 workmen concerned in the permission application some more workmen had also desired to opt for voluntary retirement and therefore they sought permission to withdraw the application submitted under Section 25N of the ID Act by application dated 29.7.2002. It is the case of the petitioners that respective respondent No.2 in the petitions submitted their resignations on 16.7.2002 and requested for being relieved with effect from 31st August 2002 and also requested for benefits under the VRS. It appears that on the same day, separate settlement concerning 23 workmen including the respondent No.2 was signed under which it was agreed that those workmen including respondent No.2 will be

benefitted as per VRS and the settlement was also recorded that the concerned workmen had submitted their resignations with a view to avail benefits of the scheme. It appears that accordingly the respective respondents No.2 were relieved with effect from 31st August 2002 and were paid the amount due and payable under the VRS by Account Payee cheque dated 22.7.2002 which came to be accepted by the respective respondent No.2. Not only that but the respondent No.2 subsequently made an application on 1.9.2002 in prescribed form under the gratuity rules for payment of gratuity and in the said application the reason for termination of employment was stated to be “resigned” and thereafter they are paid the amount of gratuity, bonus, leave encashment and wages by cheque dated 2.9.2002 which also came to be accepted by the concerned workmen respondent No.2. Not only that but subsequently in the month of November 2002 also the respective respondent No.2 submitted an application in the prescribed form for withdrawal of Provident Fund standing to their credit and it appears that they have withdrawn the amount of PF also. It is the case of the petitioners that inspite of the aforesaid facts and circumstances having tendered voluntary resignation, accepted the amount due and payable under the VRS, having accepted the gratuity amount and PF amount after

a period of 2 years the respondents No.2 raised an industrial dispute for reinstatement in service on the ground that their services were terminated on 1.9.2002 by way of victimisation and accordingly the concerned respondent No.2 approached the respondent No.1 Assistant Labour Commissioner, Mehsana. It is the contention on behalf of the petitioners that though it was pointed out to the respondent No.1 that the respondent No.2 workmen had already accepted the VRS and are paid the amount due and payable under the aforesaid VRS and that they have also accepted the amount of gratuity and PF there is no question of referring the dispute now to the court for adjudication and inspite of the aforesaid facts and circumstances the respondent No.1 by impugned orders dated 21st December 2004 referred the dispute to the Labour Court for its adjudication and the terms of Reference are whether the concerned respondent No.2 should be reinstated in service or not. Being aggrieved and dissatisfied with the same the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. Shri Varun K. Patel, learned advocate appearing on behalf of the petitioners has vehemently submitted that the respondents have accepted the VRS and the benefits

under the scheme and also the amount of gratuity as well as PF and having accepted all the benefits by entering into a settlement it is not open for the respondent No.2 to approach the respondent No.1; the respondent No.1 ought not to have referred the dispute as after having accepted the voluntary resignation submitted by the respondent No.2 there is no employer-employee relationship between the petitioner and respondent No.2; there cannot be any dispute subsequently; and therefore the impugned order referring the dispute to the Labour Court for its adjudication requires to be quashed and set aside. Shri Patel has relied upon the following judgments;

1. A.K. Bindal And Another Vs. Union of India And Others - reported in (2003) 5 SCC 163.

2. Everestee Vs. District Labour Officer -reported in 1999-II-LLJ Page 851.

3. Purandaran and Others Vs. Hindustan Lever Ltd., - reported in 2001-II-LLJ Page 52.

4. Unreported Judgment of the Division Bench of this Court in LPA No. 852 of 2000 between Gujarat Industrial Investment Corporation Ltd. Vs. Babubhai R. Patel.

Relying upon the aforesaid judgments, he has submitted that once an employee opts for VRS and accepts benefits thereunder his rights as an employee comes to an end

and there is no employer-employee relationship between them and so subsequently cannot raise any dispute. It is therefore requested to allow both the Special Civil Applications by quashing and setting aside the orders passed by the respondent No.1 referring the disputes to the appropriate court for its adjudication.

4.1 On the other hand, Shri DJ Bhatt, learned advocate appearing on behalf of concerned respondent No.2 has opposed the present Special Civil Applications. An affidavit-in-reply is filed on behalf of the respondent No.2. It is submitted that their signatures have been taken on blank papers; in fact at the relevant time when the so-called voluntary resignations of the respondent No.2 are alleged to have been accepted the VRS itself was not in existence; submission of application by the petitioners to retrench the respondent No.2 and other employees and application under Section 25-N of the ID Act goes to show that there was no question of accepting the voluntary resignations of the respondent No.2 by the petitioners; there was misrepresentation on the part of the petitioners to the effect that the respondent No.2 workmen were told that after the new machineries are installed they will be taken back on duty; having not taken back the respondent No.2 on duty they have raised

an industrial dispute; the respondent No.1 has rightly referred the dispute to the Labour Court for its adjudication; and it is ultimately for the Labour Court to consider the same and grant any relief. It is submitted that in view of the false promises the petitioner company earned the time and the delay has occurred because of the company more particularly when the respondents No.2 were not reinstated after the new plant was started; and therefore it is requested to dismiss both the Special Civil Applications. It is also further submitted that not only the existence but apprehension of industrial dispute is sufficient to make a Reference looking to the fact whether it was a resignation, voluntary or forcible and whether the VRS was in existence or not, and all the aforesaid disputes cannot be decided in the present Special Civil Application under Article 226 of the Constitution of India and therefore it is requested to dismiss both the Specila Civil Applications.

5. An Affidavit-in-Reply is also filed on behalf of respondent No.1 Assistant Labour Commissioner. It is submitted that the settlement between the petitioner and the concerned respondent No.2 workmen were not produced at the time of conciliation. It is also

further submitted that the functioning of the Conciliation Officer under the ID Act, 1947 is solely of administrative nature; the powers to adjudicate upon the disputes lie with the Labour Court with respective jurisdiction; after coming to conclusion that industrial dispute exists the employer-employee relationship is established; thereafter the respondent No.1 has referred the dispute to the Labour Court for adjudication in exercise of powers under Section 10(1) (c) of the ID Act,1947; and therefore it is requested to dismiss both the Special Civil Applications.

6. Heard the learned advocates appearing on behalf of the parties. It appears that the concerned respondent No.2 have tendered voluntary resignations. It is not in dispute that concerned respondent No.2 has withdrawn the amount which is due and payable to them under the VRS and the said amount has been paid by cheques. It also appears that subsequently the concerned respondent No.2 workmen had submitted applications for withdrawal of amount of gratuity which they have withdrawn. It also appears from the record that subsequently they have also withdrawn the amount of PF in the year 2002 itself. After a period of 2 years the concerned respondent No.2 workmen had approached the respondent No.1 by raising the dispute alleging inter alia that

there is illegal termination with effect from 1.9.2002. As held by the Hon'ble Supreme Court in the case of A.K. Bindal and Another (supra) once employees opt to retire under VRS and accept the benefits thereunder their rights as employees come to an end and thereafter they cannot again assert their rights and reagitate their claim for pay revision for preretirement period nor can they contend that they opted for VRS under compulsion. The Kerala High Court in the case of Everestee (supra) has gone to the extent that the workmea having voluntarily tendered his resignation pursuant to a scheme for voluntary retirement, resignation having been accepted by the management and all the benefits arising out of such resignation have been paid by the management and received by the applicant the said workman cannot be treated as “workman” coming under Section 2(s) of the ID Act. It is also observed by the Kerala High Court therein that the definition of “workman” only includes the persons who are presently employed or who have been dismissed, discharged or retrenched from the service of the employer and in fact, dismissal, discharge or retrenchment is an act of employer, whereas terminating the contract of service by way of resignation by the workman is his own act. In another judgment, the similar view is taken by the Kerala High Court in the case of Purandaran and Others (supra). The Division Bench of

this Court in its judgment and order dated 6.12.2001 rendered in Letters Patent Appeal No. 852 of 2000 in the case of Gujarat Industrial Investment Corporation Ltd. (supra) has, while allowing the LPA, quashed and set aside the orders passed by the appropriate Government referring the so-called dispute raised by the concerned employee for adjudication by the Labour Court on the ground that once the voluntary retirement scheme has been accepted and the benefits have been accepted there cannot be any industrial dispute in existence.

6.1. In the facts of the case on hand, the respondents No.2 had tendered their voluntary resignations by entering into settlement with regard to the same, they are already paid the benefits available to them under the VRS by cheque on 22.7.2002, paid further amount by cheques on 2.9.2002 being amount of gratuity, bonus, leave encashment etc., withdrawn their PF amount; and after a period of two years raising the industrial dispute they approached the respondent No.1. In view of acceptance of their voluntary resignations and acceptance of benefits flowing from the VRS, there is no employer-employee relationship in existence between the petitioners and the concerned respondent No.2 workmen. Not only that, it cannot be said that there exists any dispute between the petitioner and the

concerned respondent No.2 once they tendered voluntary resignations which were accepted and consequently the concerned respondents No.2 have accepted all the benefits flowing from the VRS as well as gratuity amount, PF amount etc. Under the circumstances, the respondent No.1 has materially erred in holding that there is dispute existing between the petitioner and the respondent No.2 workmen and in referring such a dispute to the Labour Court for its adjudication the respondent No.1 has exceeded in his jursdiction while exercising powers under Section 10 of the ID Act.

7. The contentions on behalf of respondent No.2 workmen that they have not tendered voluntary resignations and that their signatures were taken on blank papers and that there was misrepresentation on the part of the petitioners that they will be taken back on duty after the new plant is started are nothing but afterthoughts and dishonest defences which cannot be accepted in the facts and circumstances of the case more particularly as stated hereinabove not only their voluntarily resignations have been accepted but they are paid the benefits flowing from the VRS by cheque in the month of July 2002 by entering into settlement and thereafter they are paid the gratuity as well as provident fund amounts. The contention on behalf of the respondent

No.2 workmen, that application has been submitted by the petitioners to retrench 18 workmen inclusive of the respondent No.2 workmen under Section 25-N of the ID Act suggests that there was no voluntary resignation and that the VRS was not in existence, also cannot be accepted, as, as suggested by the petitioners during the pendency of the aforesaid application there was a settlement whereby the respondent No.2 workmen along with other employees agreed to tender voluntary retirement and accordingly they have accepted the same and pursuant thereto application was given by the petitioners before the appropriate authority to withdraw the application under Section 25-N and the appropriate authority has permitted the petitioners to withdraw the said application. It is the case of the petitioners that the VRS was extended and in fact in view of the fact there was a settlement between the petitioners and the respondent No.2 workmen and other employees with regard to acceptance of voluntary retirement it does not lie in the mouth of respondent No.2 workmen now to contend that the VRS was not in existence in the month of July 2002, after having accepted all the benefits flowing from the VRS. In view of the fact situation, there is no substance in any of the submissions made on behalf of the respondent No.2 workmen.

8. For the reasons stated hereinabove, both the petitions succeed and the impugned orders passed by the respondent No.1 referring the disputes to the Labour Court for its adjudication qua the respondent No.2 are hereby quashed and set aside. Rule in each of the matters is hereby made absolute. However, in the facts and circumstances of the case, there will be no order as to costs.

[M.R. Shah, J.]

rmr.